

AMENDED IN ASSEMBLY APRIL 16, 2002

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2058

Introduced by Assembly Members Papan, Dutra, and Simitian
(Coauthor: Assembly Member ~~Alquist~~ Members Alquist, Cohn,
Corbett, and Diaz)
(Coauthor: Senator Sher) Coauthors: Senators Figueroa and Sher)

February 19, 2002

An act to add Division 31 (commencing with Section 81300) to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Papan. Regional Water Supply and Conservation Agency.

(1) Under existing law, the City and County of San Francisco (city) operates the Hetch Hetchy Project as a regional water delivery system, supplying water to persons and entities in the city and the Counties of Alameda, San Mateo, and Santa Clara.

This bill would enact the Regional Water Supply and Conservation Agency Act. The bill would provide for the formation of the Bay Area Water Supply and Conservation Agency by 26 public entities that purchase water from the city. The bill would provide for the adoption of resolutions by those public agencies as to whether to form and join the agency. The bill would require the Board of Supervisors of San Mateo County to determine whether or not resolutions to form and join the agency have been adopted by at least 15 of those public entities

representing collectively at least 60% of certain water deliveries. If so, the bill would require the clerk of that board of supervisors to file a certificate with the Secretary of State and would require the secretary to issue a certificate of formation. The bill would thereafter authorize certain public entities, including the city, to become members of the agency, subject to certain procedures.

The bill would require each member of the agency to appoint one member to the board, and would require the Boards of Supervisors of San Mateo County and Santa Clara County to each appoint one member, to a 4-year term on the board. The bill would allow each director to receive compensation prescribed by the board, and would provide for the reimbursement of reasonable expenses incurred in the performance of duties. The bill would grant each director one vote on any ordinance, resolution, or motion, but would also provide for weighted voting.

The bill would authorize the agency to acquire water and water rights within or outside the state; develop, store, and transport water; provide, deliver, and sell water at wholesale for municipal, domestic, and industrial purposes to certain entities; and acquire, construct, operate, and maintain works and facilities to carry out the agency's purposes. The bill would authorize the agency to provide, sell, or deliver surplus water for beneficial uses. The bill would authorize the agency to exercise the right of eminent domain, except that the bill would prohibit the agency from acquiring by eminent domain, or exercising any control over, any water distribution facility owned and operated by the city, a local public agency, or a public utility without that entity's consent.

The bill would authorize the agency to issue revenue bonds, pursuant to certain procedures, to finance the construction or improvement of facilities of the city's regional water system. The bill would require the city to impose a surcharge on each wholesale customer of the city for the purposes of generating sufficient revenue to carry out the act.

The various requirements established by the bill for local public entities in connection with the formation and operation of the agency would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Division 31 (commencing with Section 81300)
is added to the Water Code, to read:

DIVISION 31. BAY AREA REGIONAL WATER SUPPLY
AND CONSERVATION AGENCY

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

81300. This division shall be known and may be cited as the
Bay Area Regional Water Supply and Conservation Agency Act.

81301. The Legislature finds and declares all of the
following:

(a) Many separate cities, districts, and public utilities are
responsible for distribution of water in portions of the Bay Area
served by the regional system operated by the City and County of
San Francisco. Residents in the Counties of Alameda, San Mateo,
and Santa Clara who depend on the water made available on a
wholesale basis by the regional system have no right to vote in
elections in the City and County of San Francisco and are not
represented on the San Francisco commission that oversees
operation of the regional system.

(b) The San Francisco regional system is vulnerable to
catastrophic damage in a severe earthquake, which could result in
San Francisco and neighboring communities being without
potable water for up to 60 days. The San Francisco regional system
is also susceptible to severe water shortages during periods of
below average precipitation because of insufficient storage and the
absence of contractual arrangements for alternative dry year
supplies.

(c) The lack of a local, intergovernmental, cooperative
governance structure for the San Francisco regional system
prevents a systematic, rational, cost-effective program of water

1 supply, water conservation, and recycling from being developed,
2 funded, and implemented.

3 (d) It is the intent of the Legislature to enable local
4 governments responsible for water distribution in the three
5 counties to establish a multicounty agency authorized to plan for
6 and acquire supplemental water supplies, to encourage water
7 conservation and use of recycled water on a regional basis, and to
8 assist in the financing of essential repairs and improvements to the
9 San Francisco regional water system, including seismic
10 strengthening.

11 (e) The need for coordinated planning and implementation of
12 strategies for water supply, water conservation, water recycling,
13 and repair and improvement of the San Francisco regional system
14 may appropriately lead to the establishment of the Bay Area Water
15 Planning and Conservation Agency.

16 Article 2. Definitions

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19 81302. Unless the context otherwise requires, the definitions
20 in this article govern the construction of this division.

21 81303. “Agency” means the Bay Area Water Supply and
22 Conservation Agency.

23 81304. “Board” means the board of directors of the agency.

24 81304.5. “City” means the City and County of San
25 Francisco.

26 81305. “Eligible public entities” means the 26 public entities
27 in San Mateo County, Alameda County, and Santa Clara County
28 that purchase water from the city pursuant to the Master Water
29 Sales Contract, that include Alameda County Water District, City
30 of Brisbane, City of Burlingame, Coastside County Water District,
31 City of Daly City, City of East Palo Alto, Estero Municipal
32 Improvement District, Guadalupe Valley Municipal Improvement
33 District, City of Hayward, Town of Hillsborough, Los Trancos
34 County Water District, City of Menlo Park, Mid-Peninsula Water
35 District, City of Millbrae, City of Milpitas, City of Mountain View,
36 North Coast County Water District, City of Palo Alto, Purissima
37 Hills Water District, City of Redwood City, City of San Bruno,
38 City of San Jose, City of Santa Clara, Skyline County Water
39 District, City of Sunnyvale, and Westborough Water District.



1 81306. “Project” means a work and all of the activities
2 related to, or necessary for, the acquisition, construction, operation
3 and maintenance of a work, including, but not limited to, planning,
4 design, financing, contracting, project management, and
5 administration.

6 81307. “Regional water system” means facilities for the
7 storage, treatment, and transmission of water operated by the city
8 located in the Counties of Tuolumne, Stanislaus, San Joaquin,
9 Alameda, Santa Clara, San Mateo, and three terminal reservoirs in
10 the city.

11 81308. “Work” or “works” include, but is not limited to,
12 reservoirs, water treatment plants, facilities for the transmission of
13 water, water conservation measures and programs, facilities for
14 the conjunctive use of surface water and groundwater, and
15 facilities for the transmission of recycled water.

16 81309. “Zone” means an improvement district, assessment
17 district, or area benefiting from a project.

18
19 CHAPTER 2. FORMATION OF AGENCY
20

21 Article 1. Resolution of Intention
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23 81315. (a) The governing body of a public entity identified
24 in Section 81305, by a majority vote of all of its members, may
25 declare the intention of that entity to form the agency with all of
26 the other public entities identified in that section.

27 (b) The resolution shall meet all of the following requirements:

28 (1) Identify the name of the public entity adopting the
29 resolution.

30 (2) Identify the name of each public entity proposed to be a
31 member of the agency, which shall include all public entities
32 identified in Section 81305.

33 (3) State that the initial territory of the agency shall be the
34 combined territory of all the public entities that become members
35 of the agency, as that territory exists at the time of the adoption of
36 the resolution.

37 (4) Fix the time and place within the boundaries of the public
38 entity adopting the resolution at which a hearing will be held by
39 its governing body to determine whether to form the agency and
40 whether to become a member of the agency. The date of the

1 hearing may not be less than 30 days, nor more than 60 days, from
2 the date of the adoption of the resolution.

3 (5) Direct publication of the resolution one time in a newspaper
4 of general circulation within the boundaries of the public entity
5 adopting the resolution at least two weeks prior to the date set for
6 the hearing.

7 81316. The governing board of the public entity adopting the
8 resolution pursuant to Section 81315, not later than 10 days after
9 the date of the adoption of the resolution, shall mail a certified copy
10 of the resolution to the governing body of each public entity
11 identified in the resolution as a proposed member of the agency.
12 The governing body of each proposed member, not later than 60
13 days after the date of the adoption of the resolution described in
14 Section 81315, shall adopt a resolution fixing the time and place
15 within the boundaries of that public entity at which a hearing will
16 be held to determine whether to form the agency and whether to
17 become a member. The date of the hearing shall be not less than
18 30 days, nor more than 60 days, from the date of the adoption of
19 the resolution by that public entity. The resolution shall be
20 published one time in a newspaper of general circulation within the
21 boundaries of that public entity at least two weeks prior to the date
22 set for the public hearing.

23 Article 2. Formation Hearings

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26 81317. At the times and places specified in the resolutions
27 adopted pursuant to Section 81315 or 81316, the governing body
28 of each public entity shall hold a public hearing on the question of
29 whether to form, and become a member of, the agency.

30 81318. As soon as practicable after the completion of the
31 public hearing described in Section 81317, and in any event not
32 later than 60 days thereafter, the governing body of each public
33 entity shall adopt a resolution that declares the finding of the
34 governing body as to whether to form and become a member of the
35 agency. The adoption of the resolution, whether affirmative or
36 negative, is subject to referendum pursuant to Division 9
37 (commencing with Section 9000) of the Elections Code, but shall
38 not be a “project” for the purposes of Division 13 (commencing
39 with Section 21000) of the Public Resources Code.

1 81319. Not later than 10 days after the date of the adoption of
2 the resolution required by Section 81318, the governing body of
3 each public entity shall cause a certified copy of the resolution to
4 be forwarded to the Board of Supervisors of San Mateo County.

5
6 Article 3. Establishment of Agency
7

8 81325. Not later than 60 days from the date of the receipt of
9 the resolutions pursuant to Section 81319, the Board of
10 Supervisors of San Mateo County shall determine whether or not
11 resolutions to form and join the agency have been adopted by at
12 least 15 public entities representing collectively at least 60 percent
13 of the total water deliveries of all the public entities identified in
14 Section 81305. In making that determination, the board of
15 supervisors shall use the water delivery quantities set forth in
16 Section 81460. If 15 or more public entities representing
17 collectively 60 percent or more of those water deliveries have
18 adopted those resolutions, the board of supervisors, by order
19 entered in its minutes, shall declare that the agency has been
20 formed and list each public entity that is a member of the agency.

21 81325.5. In making the determination required by Section
22 81325, the board of supervisors shall include all resolutions
23 received by the county at least 10 days before the date of the public
24 meeting at which the determination is made.

25 81325.7. If the board of supervisors determines that the
26 resolutions submitted are insufficient to form the agency, the
27 eligible public entities may again undertake the process described
28 in Sections 81315 to 81319, inclusive, at any time. In addition,
29 resolutions adopted that approve formation of the agency may
30 remain in effect for the time specified in those resolutions, unless
31 those resolutions are otherwise repealed.

32 81326. The Clerk of the Board of Supervisors of San Mateo
33 County, not later than 10 days from the date of entry of an order
34 described in Section 81325, shall file a certificate with the
35 Secretary of State identifying the name of the agency and the
36 names of each public entity that is a member of the agency. The
37 board of supervisors shall include a map showing the boundaries
38 of the agency, with reference to the boundaries of each member
39 public entity.

1 81327. The Secretary of State, not later than 10 days from the
2 date of the receipt of the certificate described in Section 81326,
3 shall issue a certificate of formation reciting that the agency has
4 been formed pursuant to this division and identifying the public
5 entities of which the agency is comprised. The Secretary of State
6 shall transmit a copy of the certificate to each public entity that is
7 a member of the agency.

8 81328. The formation of the agency shall be effective on the
9 date of the issuance of the Secretary of State's certificate.

10 81329. No invalidity or irregularity in any proceeding that
11 does not substantially and adversely affect the interests of any
12 public entity identified in Section 81305 may be held to invalidate
13 the formation of the agency.

14 81330. Any action or proceeding in which the validity of the
15 formation of the agency, or any of the proceedings in relation
16 thereto, is contested, questioned, or challenged shall be
17 commenced not later than 90 days from the date of the Secretary
18 of State's certificate of formation. In the absence of that action or
19 proceeding, the formation and legal existence of the agency, and
20 all proceedings in relation thereto, shall be held to be in every
21 respect valid, legal, and incontestable.

22 81331. The formation of the agency, proceedings to increase
23 its membership pursuant to Section 81456 or 81456.5, or the
24 establishment or modification of any zone or improvement district
25 is not subject to Division 3 (commencing with Section 56000) of
26 Title 5 of the Government Code.

27 81332. The agency is a political subdivision of the state, and
28 a "water district" for the purposes of Section 8 of the Raker Act
29 (63 P.L. 41).

31 CHAPTER 3. GOVERNMENT OF AGENCY

33 Article 1. Board of Directors

35 81335. The agency shall be governed by a board of directors.

36 81336. (a) The governing body of each member public entity
37 shall appoint one member to the board of the agency. Each director
38 shall be a registered voter and reside within the boundaries of the
39 member public entity whose governing board appoints him or her.

(b) For the purposes of subdivision (a), the governing body may appoint one of its own members to the board if that person otherwise meets the requirements of that subdivision.

(c) (1) The Board of Supervisors of San Mateo County shall appoint one member to the board, who is an officer or employee of the California Water Service Company.

(2) The Board of Supervisors of Santa Clara County shall appoint one member to the board who is an officer or employee of Stanford University.

~~(d) No incompatibility of office shall result from an elected official serving on the board of the agency and on the governing board of a member public entity. A board member may vote on contracts or other matters involving the member public entity he or she represents.~~

~~(e)~~

(d) The initial appointments shall be made not later than 60 days after the date of *the issuance of* the certificate of formation issued pursuant to Section 81327.

81336.5. (a) *No incompatibility of office shall result from an elected official serving on the board of the agency and on the governing board of a member public entity. A board member may vote on contracts or other matters involving the member public entity he or she represents.*

(b) *The agency may enter into a contract with California Water Service Company only if both of the following requirements are met:*

(1) *The director appointed by the Board of Supervisors of San Mateo County does not participate in a vote on the contract.*

(2) *The contract is approved by the affirmative vote of a majority of all members of the board other than the director appointed by the Board of Supervisors of San Mateo County.*

(c) *The agency may enter into a contract with Stanford University only if both of the following requirements are met:*

(1) *The director appointed by the Board of Supervisors of Santa Clara County does not participate in a vote on the contract.*

(2) *The contract is approved by the affirmative vote of a majority of all members of the board other than the director appointed by the Board of Supervisors of Santa Clara County.*

(d) *A contract approved pursuant to the requirements of this division does not constitute a violation of Section 1090 or 1097 of*

1 *the Government Code, nor is it void or voidable pursuant to*
2 *Section 1092 of the Government Code.*

3 81337. Each director, before entering upon the duties of his or
4 her office, shall take the oath of office as provided for in the
5 California Constitution and laws of the state.

6 81338. (a) Each director shall serve a term of four years.

7 (b) Notwithstanding subdivision (a), the directors initially
8 appointed to the board shall determine, by lot, that one-half plus
9 one of their number shall serve for four years and the remaining
10 directors shall serve for two years. Thereafter, each appointing
11 authority shall appoint a person to replace its respective director
12 or may reappoint its director for an unlimited number of terms.

13 (c) A vacancy on the board shall be filled by the respective
14 appointing authority not later than 90 days from the date of the
15 occurrence of the vacancy.

16 81339. Each director may receive compensation in an amount
17 prescribed by the board, not to exceed one hundred dollars (\$100)
18 per day for each day's attendance at meetings of the board, not to
19 exceed four meetings in any calendar month. In addition, each
20 director may be reimbursed for actual, necessary, and reasonable
21 expenses incurred in the performance of duties performed at the
22 request of the board. The compensation of directors may be
23 increased pursuant to Chapter 2 (commencing with Section
24 20200) of Division 10.

25 81400. A majority of the members of the board constitutes a
26 quorum for the transaction of business. The board shall act only by
27 ordinance, resolution, or motion.

28 81401. The board shall hold its first meeting as soon as
29 possible after the appointment of the initial directors. At its first
30 meeting, and at its first meeting in January each year thereafter, the
31 board shall elect a chairperson and a vice-chairperson from among
32 its members.

33 81402. The board shall provide for the time and place of
34 holding its regular meetings. All meetings of the board shall be
35 called and held in accordance with Chapter 9 (commencing with
36 Section 54950) of Part 1 of Division 2 of Title 5 of the Government
37 Code.

38 81403. Each director has one vote. The affirmative vote of a
39 majority of the directors present and voting is necessary and
40 sufficient to carry any motion, resolution, or ordinance, except

1 when weighted voting is in effect pursuant to Section 81404 or
2 when a greater vote is required by Section 81428 or 81434.

3 81404. Before the vote on any motion, resolution, or
4 ordinance is taken, any director may call for weighted voting.
5 Upon such a call, Section 81405 shall apply as to that motion,
6 resolution, or ordinance.

7 81405. (a) Weighted voting shall be based on the average
8 deliveries of water from the city during the 2000–01 fiscal year,
9 as set forth in Section 81460.

10 (b) When weighted voting is in effect, there shall be a total of
11 100 possible votes. The allocation of these votes among the
12 directors shall be determined as follows:

13 (1) The water deliveries to each member public entity,
14 California Water Service Company, and Stanford University, as
15 set forth in Section 81460, shall be totaled.

16 (2) Each director representing a member public entity whose
17 individual water delivery is less than 1.5 percent of the total
18 amount calculated pursuant to paragraph (1) shall be assigned one
19 vote.

20 (3) The water deliveries to all member public entities assigned
21 one vote pursuant to paragraph (2) shall be totaled and that sum
22 shall be subtracted from the total amount calculated pursuant to
23 paragraph (1).

24 (4) The ratio of individual water deliveries to each remaining
25 member public entity, California Water Service Company, and
26 Stanford University to the total water deliveries calculated
27 pursuant to paragraph (3) shall be determined and expressed as a
28 fraction.

29 (5) The total number of votes assigned to directors pursuant to
30 paragraph (2) shall be subtracted from 100.

31 (6) The number resulting from the calculation described in
32 paragraph (5) shall be multiplied by the fractions calculated
33 pursuant to paragraph (4), and the products of that multiplication
34 shall be rounded to the nearest whole number. Each director, other
35 than those assigned one vote pursuant to paragraph (2), shall be
36 assigned the number of votes resulting from this calculation.

37 (c) When weighted voting is in effect, the affirmative vote of
38 directors representing both (1) a majority of the members of the
39 board present and voting, and (2) a majority of the number of
40 votes, determined pursuant to this section, represented by directors

1 present and voting shall be necessary to carry any motion,
2 resolution, or ordinance.

3 (d) Notwithstanding any other provision of this division, the
4 board may establish alternative procedures and methods for
5 weighted voting, including a limitation on the types of measures
6 to which it applies, by a vote of (1) at least two-thirds of all the
7 directors of the board, each director having one vote on the
8 question, and (2) at least 51 votes, determined pursuant to this
9 section.

10 81406. (a) On all ordinances and resolutions, and on all
11 questions to be decided by weighted voting, the roll shall be called
12 and ayes and noes recorded in the minutes of the proceedings of
13 the board.

14 (b) Motions, other than motions to be decided by weighted
15 voting, may be adopted by voice vote, except that the roll shall be
16 called at the request of any director.

17

18 Article 2. Officers and Employees

19

20 81407. The board shall appoint a general manager, a financial
21 officer, and a secretary. The board may establish other offices that
22 may be necessary or convenient. The board shall appoint, and
23 prescribe the duties, compensation, and terms and conditions of
24 employment of, all officers.

25 81408. The board may employ other employees that the board
26 determines are necessary or convenient and may delegate to the
27 general manager the authority to employ or contract for the
28 services of additional assistants or employees that the general
29 manager determines necessary or convenient to operate the
30 agency. The board shall extend offers of employment on terms
31 comparable to those applicable to the employees of the Bay Area
32 Water Users Association on January 1, 2003, as determined by the
33 board.

34 81409. The board may require, and establish the amount of,
35 official bonds of officers and employees that are necessary for the
36 protection of the funds and property of the agency.

37 81410. (a) Article 4 (commencing with Section 1090) of
38 Chapter 1 of Division 4 of Title 1 of the Government Code applies
39 to all officers and employees of the agency.



1 (b) The agency is a “local government agency” for the
2 purposes of the Political Reform Act of 1974 (Title 9
3 (commencing with Section 81000) of the Government Code).

4
5 CHAPTER 4. POWERS AND FUNCTIONS OF AGENCY

6
7 Article 1. Powers

8
9 81415. The agency may exercise the powers that are expressly
10 granted by this division, together with other powers that are
11 reasonably implied from those express powers, and powers
12 necessary and proper to carry out this division.

13 81416. The agency may adopt a seal and alter it at pleasure.

14 81417. The agency may adopt regulations to carry out this
15 division.

16 81418. (a) The agency may make contracts of any nature,
17 including, but not limited to, contracts to employ labor, to
18 indemnify and hold harmless, and to do all acts necessary or
19 convenient for the full exercise of its powers.

20 (b) The agency may contract with any department or agency of
21 the United States, the state, a public or private entity, or person.

22 81419. The agency may take by grant, purchase, bequest,
23 devise, lease, or eminent domain, and may hold, enjoy, lease, sell,
24 or otherwise dispose of real and personal property of any kind,
25 within or outside the boundaries of the agency.

26 81420. The agency may plan, finance, acquire, construct,
27 maintain, and operate facilities for the collection, transmission,
28 treatment, reclamation, reuse, and conservation of water.

29 81421. The agency may disseminate information concerning
30 its activities.

31 81422. The agency may apply for and receive state and
32 federal grants, loans, and other financial assistance.

33
34 Article 2. Financial Matters

35
36 81425. The board shall adopt a budget for each fiscal year.

37 81426. The accounts of the agency shall be audited annually
38 in accordance with generally accepted auditing standards by
39 independent certified public accountants with experience in
40 auditing the accounts of local public entities.

1 81427. The agency may borrow money, incur indebtedness,
2 and issue notes and bonds, as provided in this division or as
3 otherwise authorized by law.

4 81428. (a) (1) The agency may issue revenue bonds upon
5 the adoption of an ordinance by a two-thirds vote of all of the
6 members of the board present and voting which also represents at
7 least 51 votes determined pursuant to Section 81405. For the
8 purposes of issuing bonds pursuant to this subdivision, the agency
9 need not conduct an election or otherwise secure the approval of
10 the voters within the boundaries of the agency.

11 (2) The agency shall publish a notice in a newspaper of general
12 circulation at least 15 days before the meeting at which issuance
13 of revenue bonds is to be considered and shall provide an
14 opportunity for public comments during that meeting and before
15 the directors vote on the issuance of those bonds.

16 (b) In addition, the agency may issue revenue bonds pursuant
17 to Article 2 (commencing with Section 6540) of Chapter 5 of
18 Division 7 of Title 1 of the Government Code.

19 81429. The agency may issue bonds for the purpose of
20 refunding any revenue bonds of the agency, whether due or not
21 due.

22 81430. The agency may issue negotiable promissory notes to
23 acquire funds for any agency purpose. The notes shall have a term
24 not to exceed five years. The total amount of notes issued pursuant
25 to this section that may be outstanding at any one time may not
26 ~~exceed one hundred million dollars (\$100,000,000).~~ *exceed one*
27 *million dollars (\$1,000,000).*

28 81431. The authority granted pursuant to the Improvement
29 Act of 1911 (Division 7 (commencing with Section 5000) of the
30 Streets and Highways Code), the Municipal Improvement Act of
31 1913 (Division 12 (commencing with Section 10000) of the
32 Streets and Highways Code), the Improvement Bond Act of 1915
33 (Division 10 (commencing with Section 8500) of the Streets and
34 Highways Code), and the Mello-Roos Community Facilities Act
35 of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1
36 of Division 2 of Title 5 of the Government Code) may be exercised
37 by the agency to carry out this division.

38 81432. Bonds and other evidences of indebtedness issued by
39 the agency are legal investments for all trust funds and for funds
40 of all insurers, commercial and savings banks, trust companies,

1 and state schools. Funds that may be invested in bonds of cities,
2 cities and counties, counties, school districts, or other local
3 agencies may also be invested in bonds and other evidences of
4 indebtedness of the agency.

5 81433. The board shall impose assessments sufficient to pay
6 the operating expenses included in the budget, which shall be an
7 obligation of each member public entity, the California Water
8 Service Company, and Stanford University. The assessments shall
9 be based on, and proportional to, water delivery amounts
10 described in Section 81460.

11 81434. The agency may use proceeds of bonds authorized by
12 this division for the construction, reconstruction, or improvement
13 of facilities of the San Francisco regional water system only under
14 one of the following conditions:

15 (a) The city has become a member of the agency pursuant to
16 Section 81456.5.

17 (b) The board has determined, by a two-thirds vote of all the
18 directors present and voting, which also represents at least 51 votes
19 determined pursuant to Section 81405, that the city, by legally
20 enforceable contract, has agreed, at a minimum, to do all of the
21 following:

22 (1) Grant to the agency the authority to monitor all aspects of
23 design, contracting, and construction of those facilities.

24 (2) Provide the agency complete, accurate, and timely
25 information on the expenditure of the bond proceeds.

26 (3) Include a surcharge in the water bills sent to all wholesale
27 customers, including all of the public entities that are identified in
28 Section 81305, Stanford University, and the California Water
29 Service Company, in an amount that will generate sufficient
30 revenue to pay the wholesale customers' share of debt service on
31 bonds issued pursuant to this division used for the regional water
32 system and transmit the proceeds of the surcharge to the agency for
33 payment of that debt service.

34 81435. (a) The city shall include a surcharge, in an amount or
35 amounts determined by the agency, in the water bills sent to each
36 wholesale customer of the city, including all of the public entities
37 that are identified in Section 81305, Stanford University, and the
38 California Water Service Company.

(b) The proceeds of the surcharge shall be collected by the city and transmitted to the agency for the purposes of carrying out this division.

Article 3. Controversies

81440. The agency may sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

81441. All claims for money or damages against the agency are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

81442. An action to determine the validity of any contract, or any bond, note, or other evidence of indebtedness, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

CHAPTER 5. WATER SUPPLY

81445. The agency may do all of the following:

(a) Acquire water and water rights within or outside the state.

(b) Develop, store, and transport water.

(c) Provide, deliver, and sell water at wholesale for municipal, domestic, and industrial purposes to any city, county, district, other local public entity, public utility, or mutual water company located within the boundaries of the agency, and to Stanford University.

(d) Acquire, construct, operate, and maintain any and all works, facilities, improvements, and property within or outside the boundaries of the agency necessary or convenient to carry out this division.

81446. The agency may conduct studies of the water supplies available to its members, and their current and future demand for water. The agency may develop plans for projects and programs that can assist its members to meet those future water needs.

81447. The agency may provide, deliver, and sell water not needed for municipal, domestic, or industrial uses within the boundaries of the agency for beneficial purposes but shall give preference to users within the agency. The supply of surplus water shall in every case be subject to the paramount right of the agency

1 to discontinue that supply in whole or in part upon one year's
2 notice to the purchaser or user of that surplus water.

3 81448. The agency may not sell water to any retail user within
4 the boundaries of the agency. Sales to Stanford University shall not
5 be deemed sales to a retail user.

6 81449. Except as provided in Section 81452, the agency may
7 exercise the right of eminent domain in the manner provided by
8 law to acquire any property, within or outside the boundaries of the
9 agency, necessary or convenient to carry out this division.

10 81450. The agency is entitled to the benefit of any reservation
11 or grant, in all cases, where any right has been reserved or granted
12 to the state, or any agency or political subdivision thereof, or any
13 public corporation, to construct or maintain water-related facilities
14 in, under, or over any public or private lands.

15 81451. The agency may construct and operate works and
16 facilities in, under, over, across, or along any street or public
17 highway or over any of the lands which are the property of the state
18 to the same extent that those rights and privileges are granted to
19 cities within the state.

20 81452. The agency may not acquire by eminent domain,
21 interfere with, or exercise any control over, any water distribution
22 facility owned and operated by any city, local public entity, or
23 public utility without the consent of, and upon those terms that are
24 mutually agreed to by, that city, local public agency, or public
25 utility.

26
27 CHAPTER 6. CHANGES IN ORGANIZATION
28

29 81455. Any territory annexed to, or detached from, a member
30 public entity, upon completion of the annexation or detachment,
31 shall be deemed annexed to, or detached from, the agency.

32 81456. A public entity identified in Section 81305 that is not
33 a member at the time the agency is formed pursuant to Section
34 81328, may thereafter become a member of the agency by one of
35 the following procedures:

36 (a) By consolidation, merger, or reorganization with an
37 existing member public entity that results in the dissolution of that
38 member public entity and the acquisition of the assets of that
39 member public entity by that proposed new member public entity.
40 The new member public entity may appoint one director, and for

the purposes of weighted voting, the new member shall calculate the combined quantity of water deliveries of both the former and the new member.

(b) By joining the agency, with the approval of the board and subject to those terms and conditions that the board determines are necessary to ensure that the proposed new member pays an equitable share of the costs previously incurred by the agency.

81456.5. The city may become a member of the agency pursuant to Section 81456.

CHAPTER 7. MISCELLANEOUS

81457. Membership of a public entity in the agency does not affect the identity or legal existence, nor impair the powers, of that public entity.

81458. The city shall provide the agency with prompt access to any public records requested by the agency unless the records are exempt from disclosure pursuant to Section 6254 of the Government Code. The city may not withhold public records from the agency pursuant to a balancing of the public interest in accordance with Section 6255 of the Government Code.

81459. This division shall be liberally construed to carry out its purposes.

81460. (a) The water delivery quantities set forth in subdivision (b) describe, for the purposes of this division, the ~~daily~~ *average average daily* deliveries of water from the city to the identified entities during the 2000–01 fiscal year.

(b) The water delivery quantities are as follows:

Name	Daily Average in <i>Average Daily Deliveries in</i> Hundred Cubic Feet
Alameda County Water District	15,709
California Water Service Company	49,223
City of Brisbane	489
City of Burlingame	6,503
City of Daly City	6,070
City of East Palo Alto	2,864

1	City of Hayward	24,546
2	City Town of Hillsborough	5,099
3	City of Menlo Park	4,616
4	City of Millbrae	3,669
5	City of Milpitas	9,437
6	City of Mountain View	14,860
7	City of Palo Alto	18,438
8	City of Redwood City	15,753
9	City of San Bruno	3,266
10	City of San Jose	6,436
11	City of Santa Clara	5,473
12	City of Sunnyvale	13,112
13	Coastside County Water District	2,070
14	Estero Municipal Improvement District	7,873
15	Guadalupe Valley Municipal Improvement District	611
16	Los Trancos County Water District	161
17	Mid-Peninsula Water District	4,789
18	North Coast County Water District	4,594
19	Purissima Hills Water District	2,921
20	Skyline County Water District	226
21	Stanford University	3,604
22	Westborough Water District	1,352

23
24 *81461. Nothing in this division authorizes or requires the city*
25 *to award contracts for construction without complying with the*
26 *requirements of the city charter and ordinances adopted by the city.*

27 SEC. 2. The provisions of this division are severable. If any
28 provision of this division or its application is held invalid, that
29 invalidity shall not affect other provisions or applications that can
30 be given effect without the invalid provision or application.

31 SEC. 3. The Legislature finds and declares that this act, which
32 is applicable only to the Bay Area Water Planning and
33 Conservation Agency, is necessary because of the unique and
34 special water supply problems prevailing in the geographic area
35 that may be included in the boundaries of the agency. It is,
36 therefore, hereby declared that a general law within the meaning
37 of Section 16 of Article IV of the California Constitution cannot
38 be made applicable to the agency and the enactment of this special
39 law is necessary for the conservation, development, control, and
40 use of water supplied to that geographic area for the public good.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 a local agency or school district has the authority to levy service
4 charges, fees, or assessments sufficient to pay for the program or
5 level of service mandated by this act, within the meaning of
6 Section 17556 of the Government Code.

